

## Environmental Protection Agency

## § 791.50

$$R_x = C \frac{V_x}{V_t}$$

Where:

R=the reimbursement share owed by company X.

C=the total cost of the testing required by the test rule.

$V_x$  = the volume of the test chemical produced or imported by company X over the period defined by § 791.48.

$V_t$  = the total volume of the test chemical produced or imported over the period defined by § 791.48.

(c) The burden of proposing modifications to the formula shall lie with the party requesting the modification.

### § 791.45 Processors.

(a) Generally, processors will be deemed to have fulfilled their testing and reimbursement responsibilities indirectly, through higher prices passed on by those directly responsible, the manufacturers. There are three circumstances in which processors will have a responsibility to provide reimbursement directly to those paying for the testing:

(1) When a test rule or subsequent FEDERAL REGISTER notice pertaining to a test rule expressly obligates processors as well as manufacturers to assume direct testing and data reimbursement responsibilities.

(2) When one or more manufacturers demonstrate to the hearing officer that it is necessary to include processors in order to provide fair and equitable reimbursement in a specific case.

(3) When one or more processors voluntarily agree to reimburse manufacturers for a portion of test costs. Only those processors who volunteer will incur the obligation.

(b) A hearing including processors shall be initiated in the same way as those including only manufacturers. Voluntary negotiations must be attempted in good faith first, and the request for a hearing must contain the names of the parties and a description of the unsuccessful negotiations.

(c) When processors as well as manufacturers are required to provide reimbursement, the hearing officer will decide for each case how the reimbursement should be allocated among the participating parties. When a test rule

is applicable solely to processors, the hearing officer will apply the formula to the amount of the test chemical purchased or processed.

### § 791.48 Production volume.

(a) Production volume will be measured over a period that begins one calendar year before publication of the final test rule in the FEDERAL REGISTER and continues up to the latest data available upon resolution of a dispute.

(b) For the purpose of determining fair reimbursement shares, production volume shall include amounts of the test chemical imported in bulk form and mixtures, and the total domestic production of the chemical including that produced as a byproduct. Impurities will not be included unless the test rule specifically includes them.

(c) Amounts of the test chemical manufactured for export will not be included unless covered by a finding under TSCA section 12(a)(2).

(d) Chemicals excluded from the jurisdiction of TSCA by section 3(2)(B) need not be included in the computation of production volume. (Chemicals used as intermediates to produce pesticides are covered by TSCA.)

(e) The burden of establishing the fact that particular amounts of the test chemical are produced for exempt purposes lies with the party seeking to exclude those amounts from the calculation of his production volume.

### § 791.50 Costs.

(a) All costs reasonable and necessary to comply with the test rule, taking into account the practices of other laboratories in conducting similar tests, are eligible for reimbursement. Necessary costs include:

(1) Direct and indirect costs of planning, conducting, analyzing and submitting the test results to EPA.

(2) A reasonable profit, and a reasonable rate of interest and depreciation on the tester's initial capital investment.

(3) The cost of repeating or repairing tests where failure was demonstrably due to some cause other than negligence of the tester.